O. Deccan Agr.

19 43.

File No. Relief /43

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Deccan Agriculturists' Relief Act. 1879

V. T.

File No. O. Deccan Agr. Relief /43

Gen. 194 e.

393 A

CONTENTS.

Legal Department File No. O.Deccan Agrl.Relief/43

Sr. No.	Compilation No.	Subject.	Pages.
1.	2.	3.	4.
	O.Deccan Agrl.Relief 1943.	Opinions under the Deccan Agriculturists' Relief Act, 1879.	
1	R.I.No.6990 3-7-1943 O.Mc.5493 12-8-1943.	Sec 57 Appearance of the executent before the Sub-Registrar in person of or can send an agent with an only execitant however of a	1-7.

G.K.N 21/8/16

Lue 21/8

Submitted.

2. Before discussing the implications of the High Court rulings in

(i) XXVI, B.L.R.(1924) p.149 and

(ii) XXVIII B.L.R.(1926) p.428.

it is necessary to trace the history of sections 57 and 59 of the Deccan Agriculturists' Relief Act in their relation to the power of the Village Registrars under them. From Gupte's D.A.R.Act, p.266 (3rd end. 1940), it appears that the system of village Registrars was abolished in 1910. As a result section 56 of the Act has become inoperative (vide p.268). But the procedure in sections 57 and 59 has been incorporated in section 63 A of the Act which deals with the powers and duties of a Sub-Registrar in connection with documents registrable under section 17 of the Indian Registration Act, 1908. Rules prescirbed under section 61 of the Act for the guidance of the Village Registrars have been reproduced at pp.333.338 of Gupte's D.A.R.(3rd edn) Rule 23 referred to by the I.G.R. at p.1 ante is at p.336 of the said book (Please see p.5 ante)

3. As regards the High Court rulings it will appear that both the rulings were given with reference to section 63A of the Act as ~~the rulings were given with reference~~ the instruments in both the suit matters were compulsory regisyrable under section 17 of the Indian Registration Act, 1908, In the case of Shripathi v. Balwantrao 26 B.L.R. p.149 the document was executed by the agriculturusts before the Sub-Registrar. The party in whose favour it was executed wa represented by an agent before the sub-Registrar. The contention raised was that as the arty in whose favour the documentwas executed was not present in person before the Sub-Registrar, the document had not been validly registered. The Court after considering the wording of para 3 of section 57 of the Act came to the conclusion that the party in whose favour of document had been executed was not bound to be present under para 1 of sec 57 and it therefore held that the document had been duly registered. It appears

that the Court was not influenced by the wording of para 3 of section 57 of the Act. In view of this ruling the provision in rule 23 of the Village Registration Rules imposing upon the Village Registrar the duty of taking a declaration of the party in whose favor the document is executed or his authorised agents under their signature becmes inoperative and ineffective. If the document is presented under section 63A and the sub-Registrar act under section 57 of the Act, the answer to para 3(1) of the I.G.R's letter at p.1 ante would be in the affirmative as the claiming party is not required by law to appear before the Sub-Registrar. In the same circumstances answer to para 3(ii) of the I.G.R's letter is that if the party executing an instrument sends an agent for furnished with duly executed power of attorney such an agent should not be allowed to sign the document. In the case of a party in whose favour the instrument is executed that party need not legally be present for making such a declaration and the question of an authorised agent does not arise.

5. As regards the ruling in 28 BomL.R.p.428 the facts were that the agriculturist himself who wished to execute the document was in prison. He therefore gave a power of attorney to another person (presumably not agriculturist) to execute the document. He did not appear before the Sub-Registrar under section 63A. The question raised for the decision of the Court was whether a document can be executed by a person holding a power of attorney without appearing before the Registrar. The Court held that a document could be executed through a power of attorney under section 63A of the Act and that the person holding the power of attorney must follow the procedure prescribed in section 63A. The Court did not consider the effect of section 57 as it held that section 57 has no application to the case. It only held that "section 63A was enacted in order to give protection to agriculturists intending to execute an instrument required by section 17. If it had been intended that this section should not apply in the case of documents executed by all agriculturists through an attorney then it would have been so stated in the section." Since the Court did not consider section

section 56 while interpreting section 63A it could not be said that the ruling given under section 63A is in conflict with section 57. Similarly the ruling under 26B.L.A. 149 only decided that a party in whosefavour the document is executed need not be present before the sub-Registrar. It has not decided that an executant party under section 57 may appear by an attorney as is assumed by the I.G.R. The High Court seems to have laid stress on the word "appear" insection 63A. In para 3 of section 57 the words used are "every executant of any such instrument shall appear in person before the Village Registrar". But this section applies to instruments required by section 17 of the Indian Registration Act to be registeref under that Act. As section 57 is not operative now, the question of the amendment of the section is not of much practical importance. As however the provisions of rule 23 of the Village Registration Rules may be resorted to by the Sub-Registrar if an instrument is brought to him for registration under section 63A that rule may be amended in so far as it requires a authorised agents.

(It may be observed that so faras the Bombay Province is concerned, the D.A.R.Act is considered to be repealed in those areas in which a Board is established under section 4 of the Bombay Agr. Debtors Relief Act, 1939 (vide sect. 85 and 86 and section 2). But so longas a Board is not established under the Act of 1939 the difficulties pointed out by the I.G.R. are real and requires to be remedied.)

Sd;

Remembrancer of Legal Affairs.

VGP. 10-7-56.

Office of the R.L.A.

The R.L.A's opinion is sought on the following points raised by the Inspector General of Registration :-

(1) Whether the executant of an instrument to which section 57 of the Dekkhan Agriculturists' Relief Act (XXVII of 1879) applies must appear before the Sub-Registrar in person for the purpose of registratin a document, required by section 17(1) of the Indian Registration Act (XVI of 1908) to be registered (compulsorily ragistrable documents). Section 57 of the Dekkhan Agriculturists' Relief Act provides that "every executant of any such instrument shall appear in person before the Village Registrar." The Ruling in XXCVIIIB.L.R. 1926 (page 428), however, lays down that "the fact that an agriculturist gives a ower of attorney t another person to execute a conveyance or a mortgage on his behalf cannot prevent the application of the section '63A of the D.A.R. Act, 1879)". This Ruling implies that n agriculturist executant to whom section 63A applies need not appear in person but he may appear through a person to whom he has given a duly executed power of attorney. The Ruling would, therefore appear to be in conflict with the provisions ofsection 57 of the Dekkhan Agriculturists' Relief Act.

(2) Whether a claimant under a document to be executed by an agriculturist to which section 63A and bxxxxxx 57 of the Dekkhan Agriculturists' Relief Ac apply, could appear through an agent not furnished with a duly executed power of attorney. Section 57 (clause 3) permits the appearance of such party (parties)" by any agent whom he has duly furnished with a power of attorney executed and authenticated ....." The Ruling in XXVI B.L.R. 1924 (page149 is, however, to the effect that "under section 57 c all bound to appear before the Sub-Registrar." (Under this Ruling the question of appearing even through an attorney, is not contemplated).

(3) This Ruling raises a furtherdifficulty, viz, s to the mandatory declaration which is required to be signed by the claiming party, under Rule 23 of the Village Registration Rules under the Dekkhan Agriculturists' Relief Act. In this connection, the questions for decision are-

(i) Whether in the event of such a claiming party being absent, the declaration could be left unsigned.

(ii) Whether in case the party has sent an agent not furnished with a duly executed power of attorney, such an agent might be allowed to sign the declaration.

2. Point 1 - 28 B.L.R. 1926 not merely implies but lays it dow definitely that an agriculturist executant to whom section 63A of the Dekkhan Agriculturists' Relief Act applies need not appe to person but may appear through an agent duly authorised. Ther seems to be no question of conflict between section 63A as so interpreted and section 57. Where section 57 applies personal appearance is necessary. Where section 63A and not section 57 applies personal appearance is not necessary. Section 63A merely provides that the executant shall appear; whereas the third clause of section 57 provides that the executant appear in person and appearing by agent. It does not seem that both sections apply simultaneously is to any instance of registra tion so far at least as 'appearance' is concerned and therefore is no question of conflict.

3. Point 2- Under the last paragraph of section 57 a claimant under an instrument may appear either in person or by an agent duly furnished with a power of attorney. The word "may" clearly indicates that such appearance is optional and not mandatory. Consequently the claimant may or may not appear either in perso or through an agent. But if he desires to appear through an age such agent must be duly authorized i.e. must be duly furnished with a power of attorney.

4. Point 3. Under section 57 the appearance of a cliamant either in person or through an agent is not obligatory. The making of an endorsement on the document as provides in rule 23 will arise only when the necessary parties are present to answer the Registrar's questions. Consequently if a claimant does no appear either in person or through an agent the question of hodding an enquiry and making an endorsement does not arise and rule 23 will not be contravened. Regarding the question whethe an agent not furnished with a suly executed power of attorney is competent to sign, rule 23 provides that the signature must be that of an "authorised agent". It is difficult to see how the Village Registrar could be satisfied that the agent is authoris if there is not a duly

executed power of attorney. Further, for the purposes of section 57 and 63A an agent must be duly furnished with a power of attorney. No reason has been suggested why an agent who would not be accepted for the purposes of those two section should be accepted for the purposes of rule 23. My answer to this question is therefore in the negative.

Sd/ P.N.M. 11/

Remembrancer of Legal Affairs.

U.R. to R.D., No.5493 dated the 12th August 1943.

WGP. 10-7-56.